



STATEMENT OF
THE AMERICAN COUNCIL OF LIFE INSURERS
BEFORE THE
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE
AND GOVERNMENT SPONSORED ENTERPRISES
OF THE
COMMITTEE ON FINANCIAL SERVICES
OF THE
UNITED STATES HOUSE OF REPRESENTATIVES
ON
H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008

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Statement Made by

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Mr. Chairman and members of the Subcommittee, my name is Steve Rahn. I am Vice President and Associate General Counsel of Lincoln Financial Group. I am appearing today on behalf of the American Council of Life Insurers, the principal trade association for U.S. life insurance companies. The ACLI's 353 member companies account for approximately 93% of the industry's total assets, 93% of the industry's domestic life insurance premiums and 94% of its domestic annuity considerations. I also serve as chairman of the ACLI's Regulation Modernization Committee, which reviews legislative proposals on insurance regulatory modernization and formulates policy recommendations on these matters for consideration by the ACLI board of directors.

I appreciate the opportunity to appear before you today to share our views on H.R. 5840, the Insurance Information Act of 2008. The ACLI applauds your efforts as well as those of the bill's cosponsors, Representatives Bean, Royce, Moore and Pryce, to explore ways in which insurance regulation can be modernized and made to operate more effectively both domestically and globally. Our testimony today will touch on both the bill as introduced and on the recently released H.R. 5840 discussion draft which proposes significant changes to the bill.

As we have testified on other occasions before this Subcommittee, more and more issues of significant importance to our business are being debated and decided by Congress. And all too often Congress does not have an effective means of gaining access to critical information on the industry as a whole or of getting policy advice on domestic and international issues that reflects a national rather than a more parochial or single-state perspective. Additionally, domestic operational issues have more recently been overshadowed by a number of international insurance concerns that highlight the difficulty of dealing effectively with global policy and regulatory matters exclusively through a state-based regulatory system. Having explicit authority vested in the federal government to establish U.S. policy on

international insurance matters coupled with the ability to enter into agreements with foreign governments or authorities to implement that policy is vital to maintaining the competitive wellbeing of the life insurance business. And with initiatives such as Solvency II looming on the horizon, these international considerations will only grow in importance.

For these reasons, we welcome and support the concept of creating an Office of Insurance Information (OII) within the Department of the Treasury. We believe such an office would be enormously beneficial to Congress as it considers issues that are vitally important to our business; would facilitate the handling of international insurance matters; and would provide a means for effectively involving the insurance industry as national policy decisions are made affecting U.S. financial institutions.

As the ACLI reviewed the introduced version of H.R. 5840, we looked very closely at the provisions relating to the preemption of state laws that are determined to be inconsistent with agreements entered into by the OII on international insurance policy matters. We believe preemption is appropriate in the context of this bill, but we also believe the preemption language must be carefully crafted in order to avoid consequences that neither the industry nor Congress intend. Toward this end, the ACLI formulated a set of principles that we believe provide prudent guidance in this area. Each principle is discussed below in the context of this legislation.

First, we agree with the approach of H.R. 5840 to limit preemption to international issues where federal policy is reflected in an agreement between the OII and a foreign jurisdiction or authority. As we read the discussion draft, the language appears more general regarding what these issues might be, and we support this

change. The nature of which international issues are at the forefront of importance to Congress or an administration is likely to change from time to time.

Second, we agree with the bill's stated intent not to create any supervisory or regulatory authority in the OII or Treasury over any U.S. insurer. We understand this legislation is not designed to establish a partial substitute for an optional federal charter (OFC) or to bifurcate insurance regulation and thus subject insurers to dual, simultaneous state and federal regulatory oversight. The ACLI continues to have as its primary regulatory modernization goal the establishment of an OFC, and we believe that any day-to-day federal insurance regulatory functions must be addressed exclusively and comprehensively through a mechanism such as the OFC.

Third, we would not want to see preemption employed in a way that leads to a real or potential "solvency gap." We believe there may be circumstances under which the OII can appropriately use preemption to advance sound international insurance policies without giving rise to such a gap, and we further believe that the administrative due process provisions added in the discussion draft help assure that preemption is used only in appropriate circumstances.

Fourth, we would not want to see preemption result in any material, unfair discrimination against any U.S. insurer. That said, we do not believe use of preemption should be withheld if it can be used to realize the benefits of regulatory efficiency provided by the regulatory regimes of foreign governments or authorities that are recognized under mutual or unilateral recognition agreements as provided by the bill. Our assessment of the "less favorable treatment" standard for preemption as used in the discussion draft is still under way. One concern we have in this area is that preemption of state insurance measures can take place only in order to assure that a non-U.S. insurer does not

receive less favorable treatment than a U.S. insurer. We would certainly not want to see a circumstance arise where preemption results in the collateral consequence of treating a U.S. insurer less favorably than a foreign insurer – with no ability to employ preemption to remedy the situation. In the same vein, we think a fundamental purpose of the OII should be to maintain the global competitiveness of the U.S. insurance industry, and we suggest the charge of the office be modified to include such a reference.

And fifth, we agree with the direction the discussion draft seems to be moving by requiring the OII to consult with the Advisory Group before entering into any international agreements with foreign jurisdictions or authorities or before making any determination that a state measure is inconsistent with such agreement and therefore preempted. We do not believe the Advisory Group should have veto power over the use of preemption or, for that matter, over the adoption of policy positions on domestic or international issues (and we do not read the discussion draft as doing so), but we agree that consulting with this group on key decisions made by the OII is appropriate.

While our analysis is still under way, we do have several additional comments and observations on the discussion draft of H.R. 5840.

- We understand that with respect to the collection of data, the intent of the discussion draft is to avoid having the OII make data calls directly on insurance companies. We support this approach. However, we do have concerns with the expansion of this authority in the discussion draft to include the collection by the OII of non-publicly available information. Although we are still analyzing all of the possible ramifications resulting from this change, our immediate reaction is two-fold. First, even though the discussion draft contains language that appears intended to ensure the

confidentiality of this information, we are not convinced that as drafted those provisions achieve that goal. For example, it is not clear exactly which existing federal law would be relied upon by the OII in claiming that information it held was confidential and could not be released in accordance with a Freedom of Information Act or other legal request for release. Second, we are unclear as to the reason it would be necessary for the OII to collect such information. Since the OII is not a regulatory body, what is the purpose of having it collect and analyze data that clearly falls within the parameters of regulatory oversight of the industry? For these reasons, we strongly believe that the collection of data and other information by the OII should be strictly limited to material that is publicly available.

- We are very concerned with the elevated level of prominence the discussion draft gives to the National Association of Insurance Commissioners (NAIC) in its relationship with the OII. We believe strongly that the OII must be an independent federal policy voice on insurance industry matters. In order for the OII Director to effectively “...advise the Secretary on major domestic and international policy issues..” and be able “...to coordinate Federal efforts and establish Federal policy on international insurance matters...”, such independence is critical. Indeed, that very independence is at the heart of our support for the concept of an OII. Provisions of the discussion draft, particularly those dealing with data gathering and analysis as well as with the OII’s biennial report to Congress, directly undercut and diminish this independence in ways we find troublesome. In fact, these provisions in the discussion draft suggest that the NAIC will be the OII’s constant federal policy development partner. Discourse between the OII and the NAIC is certainly appropriate, and H.R. 5840 already assures that the opinions, positions and perspective of the NAIC will be heard regularly

by the OII, since it requires NAIC representatives be included as members to the Advisory Group. But any additional interaction between the OII and the NAIC should be at the OII's discretion as a federal authority and policymaker. We therefore strongly recommend that these provisions not be included into the next version of HR 5840.

- We strongly object to the addition of the Federal Trade Commission as a member of the Advisory Group. In the 1980 amendments to the Federal Trade Commission Act, the agency was stripped of any investigatory jurisdiction over “the business of insurance.” Additionally, the agency’s authority to conduct studies or prepare reports relating to the business of insurance was eliminated except to the extent a specific request was requested by a designated House or Senate committee. In sum, the FTC has not been involved in life insurance matters for the past 28 years, and consequently we believe it would be both inappropriate and nonproductive for the agency to be part of the Advisory Group.

Mr. Chairman, we understand and fully appreciate your intent that the OII not be construed as a substitute for, or a step in the direction of, an optional federal charter. As our comments above indicate, we see significant value in the establishment and role of the OII in and of itself and support the concept of such an office for that reason. Our primary goal with respect to modernizing the insurance regulatory system remains, however, the enactment of an OFC for insurance, and consequently we have evaluated H.R. 5840 in that light. We believe H.R. 5840 is not inconsistent with our OFC efforts, particularly since by its terms it will not afford the OII any regulatory role over domestic insurers. We do want to make clear, however, that our support for H.R. 5840 in no way diminishes our belief that an insurance OFC is vitally necessary for the life

insurance business or our commitment to work with Congress to make that objective a reality.

In conclusion, Mr. Chairman, our comments on the revised discussion draft of H.R. 5840 reflect a preliminary analysis of the various provisions in that draft. In the days ahead our analysis will continue, and we look forward to working with you and members of the Subcommittee as this legislation moves forward. Again, we thank you for your leadership role in addressing insurance issues and for advancing H.R. 5840 in this Subcommittee.